



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,534	08/19/2003	Roger W. Geary	378 P002	5975

7590 09/22/2004

Mr. Marc D. Machtinger, Esq.
Law Office of Marc D. Machtinger, Ltd.
Suite 350
750 W. Lake Cook Road
Buffalo Grove, IL 60089-2073

EXAMINER


HOGUE, GARY CHAPMAN

ART UNIT	PAPER NUMBER
----------	--------------

3611

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/644,534	Applicant(s) GEARY, ROGER W.	
	Examiner Gary C Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7 and 9-41 is/are rejected.
- 7) ☒ Claim(s) 4 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/19/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5, 9-30 and 34-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Glancy.

Glancy discloses a label assembly comprising a label 2 affixed to a non-opaque bottle 2, the label having a first viewing area 5 comprising an area free of opaque label material, and a second viewing area 4 comprising an area free of opaque label material, a first indicia portion 3 applied to an inward facing side of the label disposed substantially diametrically opposed from the first viewing area 5 about the bottle and viewably aligned with the first viewing area 5, a second indicia portion 3 applied to the inward facing side of the label disposed substantially diametrically opposed from the second viewing area 4 about the bottle and viewably aligned with the second viewing area 4, wherein the first indicia portion is viewable through the first viewing area 5 when a level of substantially opaque fluid within the bottle is below the first indicia portion and the first viewing area 5, and wherein the second indicia portion is viewable through the second viewing area 4 when a level of substantially opaque fluid within the bottle is below the second indicia portion and the second viewing area 4.

Regarding claims 9 and 10, Glancy discloses filling the container with an opaque fluid.

Regarding claims 15 and 16, see column 4, lines 14-16.

Regarding claims 17-33, 40 and 41, it has been held that patentable novelty cannot be principally predicated on mere printed matter and arrangements thereof, but must reside basically in physical structure. See *In re Montgomery*, 102 USPQ 248.

Regarding claims 36-39, these limitations are merely a statement of intended use of the container and do not further limit the claimed label. However, it appears that Glancy does anticipate these limitations.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glancy in view of Swenson.

Glancy discloses the invention substantially as claimed, as set forth above. However, the label disclosed by Glancy is made in one piece. Swenson teaches that it was known in the art to make a label in two pieces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the label disclosed by Glancy in two pieces, as taught by Swenson, in order to allow more of the liquid in the bottle to be visible to consumers.

5. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glancy in view of Taub.

Glancy discloses the invention substantially as claimed, as set forth above. However, Glancy discloses only a single container. Taub teaches that it was known in the art to provide a

Art Unit: 3611

plurality of bottles in a package. It would have been obvious to one having ordinary skill in the art at the time the invention was made to put a plurality of the bottles disclosed by Glancy in a package, as taught by Taub, in order to ship and display the product.

Allowable Subject Matter

6. Claims 4 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

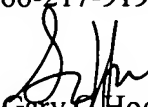
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C Hoge whose telephone number is (703) 308-3422. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 3611

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary C. Hoge
Primary Examiner
Art Unit 3611

gch